Esau Rogers
(Name)
P.O. Box 931 - D3-123L
(Address)
Imperial, CA 92251-0931
(City, State, Zip)
P-54800
(CDC Inmate No.)

2254 1983 ✓
FILING FEE PAID
Yes ___ No ✓
IFP MOTION FILED
Yes ✓ No ___
COPIES SENT TO
Court ✓ ProSe ___

ORIGINAL

FILED
2007 OCT 17 PM 3:26
CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY RM DEPUTY

United States District Court
Southern District of California

ESAU ROGERS,
(Enter full name of plaintiff in this action.)

Plaintiff,

v.

S. RIVAS, Correctional Officer; E.S. STEIN, Correctional Sergeant; JACK BATHCHELOR, Correctional Captain; ALAN HERNANDEZ, Associate Warden (A); D. DEGUES, Correctional Counselor II; J.M. SOULOOP [sic]; Chief Deputy Warden (A); VICTOR M. ALMAGER, Warden (A),
(Enter full name of each defendant in this action.)

Defendant(s).

'07CV 2010 W JMA
Civil Case No. ___
(To be supplied by Court Clerk)

Complaint Under the Civil Rights Act 42 U.S.C. § 1983

A. Jurisdiction

Jurisdiction is invoked pursuant to 28 U.S.C. § 1343(a)(3) and 42 U.S.C. § 1983. If you wish to assert jurisdiction under different or additional authority, list them below.

___

B. Parties

1. Plaintiff: This complaint alleges that the civil rights of Plaintiff, ESAU ROGERS (print Plaintiff's name), who presently resides at P.O. Box 931 - D3-123L (mailing address or place of confinement) Imperial, California 92251-0931, were violated by the actions of the below named individuals. The actions were directed against Plaintiff at Centinela State Prison (institution/place where violation occurred) on (dates) 12-01-06 (Count 1), 01-30-07 (Count 2), and 03-15-07 (Count 3).

2. Defendants: (Attach same information on additional pages if you are naming more than 4 defendants.)

Defendant S. RIVAS (name) resides in Imperial (County of residence), and is employed as a Correctional Officer (defendant's position/title (if any)). This defendant is sued in his/her ☒ individual ☒ official capacity. (Check one or both.) Explain how this defendant was acting under color of law: Defendant RIVAS acted to retaliate against Plaintiff for filing a previous grievance (appeal) against her.

Defendant E.S. STEIN (name) resides in Imperial (County of residence), and is employed as a Correctional Seregeant (defendant's position/title (if any)). This defendant is sued in his/her ☒ individual ☒ official capacity. (Check one or both.) Explain how this defendant was acting under color of law: Defendant STEIN was responsible for investigating Plaintiff's allegations of retaliation.

Defendant JACK BATCHELOR (name) resides in Imperial (County of residence), and is employed as a Correctional Captain (defendant's position/title (if any)). This defendant is sued in his/her ☒ individual ☒ official capacity. (Check one or both.) Explain how this defendant was acting under color of law: Defendant JACK BATCHELOR was responsible for investigating Plaintiff's allegations of retaliation.

Defendant D. DEGUES (name) resides in Imperial (County of residence), and is employed as a Correctional Counselor II (defendant's position/title (if any)). This defendant is sued in his/her ☒ individual ☒ official capacity. (Check one or both.) Explain how this defendant was acting under color of law: Defendant DEGUES was responsible for investigating Plaintiff's allegations of retaliation.

Defendant ALAN HERNANDEZ resides in Imperial,
(name) (County of residence)
and is employed as a Associate Warden (A). This defendant is sued in
(defendant's position/title (if any))
his/her ☒ individual ☒ official capacity. (Check one or both.) Explain how this defendant was acting under color of law: Defendant ALAN HERNANDEZ was responsible for investigating Plaintiff's allegations of retaliation.

Defendant J.M. SOULCUP [sic] resides in Imperial,
(name) (County of residence)
and is employed as a Chief Deputy Warden (A). This defendant is sued in
(defendant's position/title (if any))
his/her ☒ individual ☒ official capacity. (Check one or both.) Explain how this defendant was acting under color of law: Defendant J.M. SOULCUP [sic] was responsible for investigating Plaintiff's allegations of retaliation.

Defendant VICTOR M. ALMAGER resides in Imperial,
(name) (County of residence)
and is employed as a Warden (A). This defendant is sued in
(defendant's position/title (if any))
his/her ☒ individual ☒ official capacity. (Check one or both.) Explain how this defendant was acting under color of law: Defendant VICTOR M. ALMAGER is the warden (A) at Centinela State Prison and is responsible for the day-to-day operation. In the capacity of warden, he is responsible for the daily operation of the entire prison, and for the welfare of all the inmates of that prison, including Plaintiff.

Defendant ______ resides in ______,
(name) (County of residence)
and is employed as a ______. This defendant is sued in
(defendant's position/title (if any))
his/her ☐ individual ☐ official capacity. (Check one or both.) Explain how this defendant was acting under color of law: ______

C. Causes of Action (You may attach additional pages alleging other causes of action and the facts supporting them if necessary.)

Count 1: The following civil right has been violated: Freedom of Speech and Freedom From Cruel and Unusual Punishment. (E.g., right to medical care, access to courts, due process, free speech, freedom of religion, freedom of association, freedom from cruel and unusual punishment, etc.)

Supporting Facts: [Include all facts you consider important to Count 1. State what happened clearly and in your own words. You need not cite legal authority or argument. Be certain to describe exactly what each defendant, *by name*, did to violate the right alleged in Count 1.]

1. On December 1, 2006, Plaintiff returned to his assigned cell upon the conclusion of the scheduled recreation/exercise yard activities, and immediately discovered his cell in complete disarray and his personal property strewn throughout the cell.

2. Upon discovering a cell search receipt, Plaintiff approached housing unit floor (custody) staff and inquired as to why his cell was left in such a manner in clear violations of the California Code of Regulations (CCR), Title 15, § 3287(a)(2), to which Defendant RIVAS, in the presence of staff and other prisoners, scoffed and stated, "Yeah, I did it! I searched your fuckin' cell! What about it?! If you gotta fuckin' problem with it, 602 it! Now if you're finished, take your cryin' ass back to your cell and lock up!" Defendant RIVAS then added, "One of these days you'll learn. Don't forget where the fuck you're at!"

3. Plaintiff is an African American who is currently housed at a prison which has constant racial tension, and which is predominantly Hispanic, both with correctional staff and prisoner population.

4. Plaintiff has previously filed administrative appeals (grievances) against Defendant RIVAS, alleging excessive and punitive searches of his cell, in which Defendant RIVAS has intentionally destroyed and confiscated allowable personal property without legal cause to do so, and without submitting proper documentation (cell search receipt).

5. Plaintiff has also previously filed administrative appeals against Defendant RIVAS for repeated acts of disrespect and displays of contempt.

///

(CONTINUED ON PAGE -3(A)-)

C. Causes of Action - count 1 - (Continued From Page 3):

6. On December 1, 2006, Plaintiff filed an administrative appeal against Defendant RIVAS, alleging harassment and retaliation for previous administrative appeals. However, despite the fact that the appeal was partially granted, no apparent corrective action has been taken. (See Exhibit A).

7. On February 13, 2007, as a result of being dissatisfied with the First Level Review, Plaintiff submitted his administrative appeal for Second Level Review. However, despite the fact that the appeal was again partially granted, no apparent corrective action has been taken. (See Exhibit A).

8. On March 21, 2007, as a result of being dissatisfied with the Second Level Review, Plaintiff submitted his administrative appeal for Director's Level Review. However, despite the fact that the appeal was again granted in part, with direction, no apparent corrective action has been taken. (See Exhibit A).

9. Plaintiff's appeal was "granted in part" by Defendant JACK BATCHELOR on June 13, 2007. Plaintiff has thus exhausted his administrative remedies for the claims herein. (See Exhibit A).

10. Defendants S. RIVAS, E.S. STEIN, ALAN HERNANDEZ, D. DEGUES, and J.M. SOULCUP [sic] violated Plaintiff's Eighth Amendment right to be protected from cruel and unusual punishment in the form of harassment and retaliation, by their unnecessary and wanton infliction of psychological and emotional distress, as herein alleged.

11. Specifically, defendants knowingly, maliciously and sadistically inflicted emotional, and mental abuse upon Plaintiff when they allowed Defendant RIVAS to disrespect and humiliate him in front of other prisoners. Defendants' actions offend contemporary standards of decency.

///

12. Defendants, and each of them, subjected Plaintiff to this emotional, and mental abuse under circumstances which did not require such actions.

13. Defendants' acts, as alleged herein, were despicable, knowing, willful, malicious, and/or carried out with reckless disregard for Plaintiff's federally protected rights.

14. As a direct and proximate result of all of the Defendants' actions herein alleged, Plaintiff suffered, and continues to suffer, severe emotional and psychological distress. Accordingly, Plaintiff is entitled to an award of compensatory and punitive damages for injuries suffered.

15. Plaintiff is entitled to injunctive relief, including, but not limited to, an order by the Court requiring that Defendant RIVAS be monitored until the Court is satisfied that such actions by her will no longer occur or be tolerated by supervisory staff.

* * * * *

Count 2: The following civil right has been violated: Freedom From Cruel and Unusual Punishment. (E.g., right to medical care, access to courts, due process, free speech, freedom of religion, freedom of association, freedom from cruel and unusual punishment, etc.)

Supporting Facts: [Include all facts you consider important to Count 2. State what happened clearly and in your own words. You need not cite legal authority or argument. Be certain to describe exactly what each defendant, *by name*, did to violate the right alleged in Count 2.]

16. Plaintiff realleges and incorporates by reference each of the allegations of paragraphs 1 through 15, inclusive, of Count 1, as if alleged herein.

17. Defendants have denied Plaintiff his Eighth Amendment right to be free from cruel and unusual punishment in the form of retaliation for filing administrative appeals, thus denying a basic right guaranteed to prisoners by the United States Constitution.

18. In doing as alleged hereinabove, Defendants acted with deliberate indifference to Plaintiff's rights, and subjected him to unnecessary and wanton infliction of psychological and emotional distress, in violation of his rights under the Eighth Amendment, Specifically, Defendants were deliberately indifferent to Plaintiff's right to be free from retaliation when they intentionally, knowingly, and maliciously allowed Defendant RIVAS to continue to retaliate against Plaintiff for filing administrative appeals against her.

19. Defendants acted despicably, knowingly, willfully, and maliciously, and with reckless and callous disregard for Plaintiff's federally protected rights.

20. As a direct and proximate result of all of the Defendants' actions herein alleged, Plaintiff suffered, and continues to suffer, severe emotional and psychological distress. Accordingly, Plaintiff is entitled to an award of compensatory and punitive damges for injuries suffered.

21. Plaintiff is entitled to injunctive relief, including, but not limited to, an order by the Court requiring that Defendant RIVAS be monitored until the Court is satisfied that such actions by her will no longer occur or be tolerated by supervisory staff.

* * * * *

Count 3: The following civil right has been violated: Due Process Rights, Freedom of

(E.g., right to medical care, access to courts, Speech and Freedom From Cruel and Unusual Punishment. due process, free speech, freedom of religion, freedom of association, freedom from cruel and unusual punishment, etc.)

Supporting Facts: [Include all facts you consider important to Count 3. State what happened clearly and in your own words. You need not cite legal authority or argument. Be certain to describe exactly what each defendant, *by name*, did to violate the right alleged in Count 3.]

22. Plaintiff realleqs and incorporates by reference each of the allegations of paragraphs 1 through 21, inclusive, of Counts 1 and 2, as if

23. Defendants S. RIVAS, E.S. STEIN, ALAN HERNANDEZ, D. DEGUES, J.M. SOULCUP [sic], and VICTOR M. ALMAGER, and each of them, or some among them, did conspire and agree to deprive Plaintiff of his constitutional rights as alleged herein, in violation of 42 U.S.C. § 1983.

24. The conduct described herein has been and continues to be performed by Defendants and their agents or employees in their official capacities and is the proximate cause of Plaintiff's ongoing deprivation of rights secured by the United States Constitution under the First, Eighth and Fourteenth Amendments.

25. The constitutional deprivations described herein are the proximate result of the official policies, customs and pervasive practices of the Defendants. Defendants were and are aware of all of the unconstitutional conduct complained of herein, and have either condoned or been deliberately indifferent to such conduct.

* * * * *

D. Previous Lawsuits and Administrative Relief

1. Have you filed other lawsuits in state or federal courts dealing with the same or similar facts

involved in this case? ☐ Yes ☒ No.

If your answer is "Yes", describe each suit in the space below. [If more than one, attach additional pages providing the same information as below.]

(a) Parties to the previous lawsuit:
Plaintiffs: ______
Defendants: ______

(b) Name of the court and docket number: ______

(c) Disposition: [For example, was the case dismissed, appealed, or still pending?] ______

(d) Issues raised: ______

(e) Approximate date case was filed: ______.

(f) Approximate date of disposition: ______.

2. Have you previously sought and exhausted all forms of informal or formal relief from the proper administrative officials regarding the acts alleged in Part C above? [E.g., CDC Inmate/Parolee Appeal Form 602, etc.] ? ☒ Yes ☐ No.

If your answer is "Yes", briefly describe how relief was sought and the results. If your answer is "No", briefly explain why administrative relief was not sought.

(See Exhibit A)

E. Request for Relief

Plaintiff requests that this Court grant the following relief:

1. An injunction preventing defendant(s): RIVAS from any further retaliatory actions, and that she be monitored by the Court and supervisory staff until the Court is satisfied that such actions by Defendant RIVAS will no longer occur or be tolerated by supervisory staff.

2. Damages in the sum of $ 350,000.00 from each defendant

3. Punitive damages in the sum of $ 650,000.00 from each defendant

4. Other: Compensatory damages to cover undue stress and mental anguish from each defendant.

F. Demand for Jury Trial

Plaintiff demands a trial by ☒ Jury ☐ Court. (Choose one.)

G. Consent to Magistrate Judge Jurisdiction

In order to insure the just, speedy and inexpensive determination of Section 1983 Prisoner cases filed in this district, the Court has adopted a case assignment involving direct assignment of these cases to magistrate judges to conduct all proceedings including jury or bench trial and the entry of final judgment on consent of all the parties under 28 U.S.C. § 636(c), thus waiving the right to proceed before a district judge. The parties are free to withhold consent without adverse substantive consequences.

The Court encourages parties to utilize this efficient and expeditious program for case resolution due to the trial judge quality of the magistrate judges and to maximize access to the court system in a district where the criminal case loads severely limits the availability of the district judges for trial of civil cases. Consent to a magistrate judge will likely result in an earlier trial date. If you request that a district judge be designated to decide dispositive motions and try your case, a magistrate judge will nevertheless hear and decide all non-dispositive motions and will hear and issue a recommendation to the district judge as to all dispositive motions.

You may consent to have a magistrate judge conduct any and all further proceedings in this case, including trial, and the entry of final judgment by indicating your consent below.

Choose only one of the following:

☒ Plaintiff consents to magistrate judge jurisdiction as set forth above.

OR

☐ Plaintiff requests that a district judge be designated to decide dispositive matters and trial in this case.

Date

Signature of Plaintiff

EXHIBIT A

INMATE/PAROLEE APPEAL FORM
CDC 602 (12/87)

Location: Institution/Parole Region 1. CEN 2.
Log No. 1. 06-01165 2.
Category 7

You may appeal any policy, action or decision which has a significant adverse effect upon you. With the exception of Serious CDC 115s, classification committee actions, and classification and staff representative decisions, you must first informally seek relief through discussion with the appropriate staff member, who will sign your form and state what action was taken. If you are not then satisfied, you may send your appeal with all the supporting documents and not more than one additional page of comments to the Appeals Coordinator within 15 days of the action taken. No reprisals will be taken for using the appeals procedure responsibly.

NAME	NUMBER	ASSIGNMENT	UNIT/ROOM NUMBER
ROGERS ESAU	P-54800	3 watch Porter	D3-123

A. Describe Problem: This appeal is against second watch officer "Rivas". Since the past two or three months, I previously withdrew a 602 on this officer for verbally disrespecting me. I was granted a partial grant on her behavior, and ever since its been personal with her. Now she thrash my cell two to three times a week, just today 12-1-06 she thrash my cell again and took all of my state issued clothes.

[redacted]

B. Action Requested: I would like this officer removed from this building and councilled by her superiors.

Inmate/Parolee Signature: Esau Rogers Date Submitted: 12-1-06

C. INFORMAL LEVEL (Date Received:)

Staff Response:

BY-PASS

Staff Signature: Date Returned to Inmate:

D. FORMAL LEVEL
If you are dissatisfied, explain below, attach supporting documents (Completed CDC 115, Investigator's Report, Classification chrono, CDC 128, etc.) and submit to the Institution/Parole Region Appeals Coordinator for processing within 15 days of receipt of response.

BY-PASS

RECEIVED MAR 27 2007 INMATE APPEALS BRANCH

Signature: Date Submitted:

Note: Property/Funds appeals must be accompanied by a completed Board of Control form BC-1E, Inmate Claim

CDC Appeal Number:

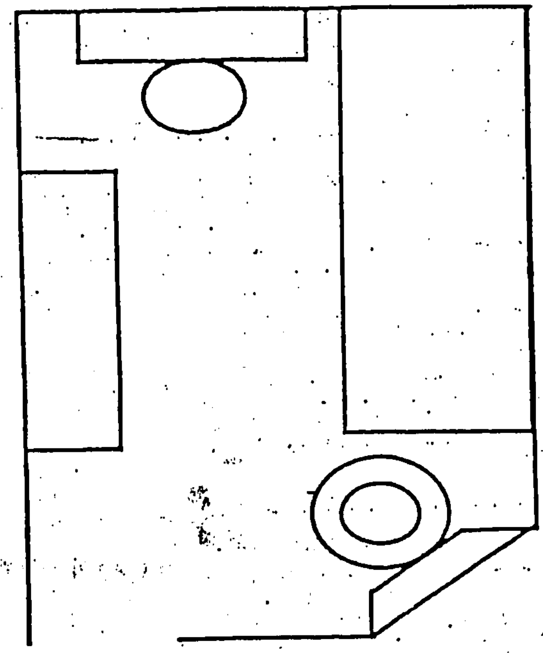
07 MAR 15 AM 8:30 INMATE APPEALS CSP--CENTINELA

07 FEB 15 PM 4:34 INMATE APPEALS CSP--CENTINELA

CENTINELA STATE PRISON

CELL SEARCH LOG

ATTACHMENT "A"



HOUSING UNIT: D2	
CELL/BUNK#: 123	

NAME & CDC #	IN	OUT	DATE
6-28-06 Isaac T-14545			
6-28-06 Rogers P-54800			

A SEARCH OF THE CELL WILL BE CONDUCTED EVERY TIME A BED/CELL MOVE IS MADE IN OR OUT OF THE CELL AND DOCUMENTED ON THE FORM BELOW. ALL DISCREPANCIES WILL BE NOTED.

(PLEASE PRINT)

DATE	STAFF COMMENTS	OFFICER
6-28-06	NEG	Banks/Rivas
8-9-06		Grijalva Rivas
9-1-2006	TRASH/Books, MAGAZINE	Corsman Tellez
10-20-06	WINDOW Cover	Corfman Thomas
10-1-06	EXCESSIVE LINEN, window cover, electrical wiring	CORFMAN RIVAS

Centinela

CELL SEARCH WORKSHEET

Date: 12-01-06
Time: 0930
Search Conducted by:
■ **Officer:** CORFMAN
(Print Name)
■ **Officer:** RIVAS
(Print Name)
Cell 123
Cell
(UPPER) ROGERS P54800
(Name & Number)
(LOWER) ISAAC T14545
(Name & Number)

Overall Condition of the cell:
- [ ] Excellent
- [ ] Poor
- [ ] Good
- [x] Unsatisfactory

The following Sanitation deficiencies were found [check the appropriate box(es)]:

- [x] Floor dirty
- [x] Toilet dirty
- [x] Wash basin dirty
- [ ] Linen requires changing
- [ ] Blankets on floor
- [x] Accumulation of trash
- [ ] Food Rations being stored
- [ ] Torn mattress
- [ ] **Other Deficiencies:** ______

The following Rule/Regulation violation(s) were discovered check appropriate box(es):

- [x] Cell Window Covered
- [ ] Door Window Covered
- [ ] Unauthorized Television
- [ ] Lights Covered
- [ ] Unauthorized Radio
- [x] Excessive Property
- [x] Unauthorized Electrical Wiring
- [x] Excessive Amount of Combustibles(boxes,etc)
- [x] Unauthorized Electrical Outlets
- [ ] Unauthorized Pornographic Material
- [x] Unauthorized Electrical Device(s)
- [ ] Gang Related Material
- [ ] Illegally Wired Television
- [ ] Pictures Attached to Cell Wall/Locker
- [ ] Illegally Wired Radio
- [ ] Excessive Amount of Books and/ Magazine
- [ ] Illegal Extension Cord
- [x] Excessive Clothing
- [x] Excessive Linen
- [ ] **Other Violations:** ______

The following items were confiscated:

1. LINEN
2. SHOES
3. WIRES
4. HIGHLIGHTERS
5. CHEW TIN
6. ______

- [ ] Television Serial No. ______
- [ ] Radio Serial No. ______
- [ ] Television Serial No. ______
- [ ] Radio Serial No. ______

COMMENTS (If Applicable): ______

A 128-A/115 has been submitted on inmate(s): ______ for this rule/regulation violation.

B Coffman
■ (Officer's Signature)

■ (Officer's Signature)

Orig: Program Lt.
Yellow copy: Unit File
Pink Copy: Inmate

CEN025
(Rev 4/99)

STATE OF CALIFORNIA
CDC 1858 (2/97)

DEPARTMENT OF CORRECTIONS AND REHABILITIATION

RIGHTS AND RESPONSIBILITIES STATEMENT

Pursuant to Penal Code 148.6, anyone wishing to file an allegation of misconduct by a departmental peace officer must read, sign and submit the following statement:

YOU HAVE THE RIGHT TO MAKE A COMPLAINT AGAINST A POLICE OFFICER [this includes a departmental peace officer] FOR ANY IMPROPER POLICE [or peace] OFFICER CONDUCT. CALIFORNIA LAW REQUIRES THIS AGENCY TO HAVE A PROCEDURE TO INVESTIGATE CITIZENS' [or inmates'/parolees'] COMPLAINTS. YOU HAVE A RIGHT TO A WRITTEN DESCRIPTION OF THIS PROCEDURE. THIS AGENCY MAY FIND, AFTER INVESTIGATION, THAT THERE IS NOT ENOUGH EVIDENCE TO WARRANT ACTION ON YOUR COMPLAINT; EVEN IF THAT IS THE CASE, YOU HAVE THE RIGHT TO MAKE THE COMPLAINT AND HAVE IT INVESTIGATED IF YOU BELIEVE AN OFFICER BEHAVED IMPROPERLY. CITIZEN [or inmate/parolee] COMPLAINTS AND ANY REPORTS OR FINDINGS RELATING TO COMPLANITS MUST BE RETAINED BY THIS AGENCY FOR AT LEAST FIVE YEARS.

COMPLAINANT'S PRINTED NAME	COMPLAINANT'S SIGNATURE	DATE SIGNED	
INMATE/PAROLEE PRINTED NAME ESAU ROGERS	INMATE/PAROLEE'S SIGNATURE Esau Rogers	CDC NUMBER P-54866	Date Signed 12-26-06
RECEIVING STAFF'S PRINTED NAME D. DeGeus	RECEIVING STAFF'S SIGNATURE [signature]	DATE SIGNED 2-9-07	

DISTRIBUTION:
ORIGINAL –
Public – Institution Head/Parole Administrator
Inmate/Parolee – Attach to CDC form 602
Employee – Institution Head/Parole Administrator
COPY – Complainant

(REV. 11/06)

Memorandum

Date : January 3, 2007

To : Inmate ROGERS
P-54800/D3-123L
CENTINELA STATE PRISON

Subject : **STAFF COMPLAINT RESPONSE**
APPEAL LOG #CEN-D-06-01165

APPEAL ISSUE: Staff Complaint

DETERMINATION OF ISSUE: A review of the allegations of staff misconduct presented in the written complaint has been completed. Based upon this review, your appeal has been handled as follows:

☒ PROCESSED AS A STAFF COMPLAINT APPEAL INQUIRY
☐ REFERRED TO THE OFFICE OF INTERNAL AFFAIRS

SUMMARY FOR APPEAL INQUIRY:

You allege S. Rivas, Correctional Officer verbally disrespected you and conducts searches of your cell two to three times a week and thrashes your property.

FINDINGS FOR AN APPEAL INQUIRY:

Your appeal is **Partially Granted** at the ☒ First Level as an inquiry into your allegation has been conducted. ALL STAFF PERSONNEL MATTERS ARE CONFIDENTIAL IN NATURE. As such, results of any inquiry/investigation will not be shared with staff, members of the public, or inmates. Although you have the right to submit a staff complaint, a request for administrative action regarding staff or the placement of documentation in a staff member's personnel file is beyond the scope of the staff complaint process.

Allegations of staff misconduct do not limit or restrict the availability of further relief via the inmate appeals process. If you wish to appeal the decision, you must submit your staff complaint appeal through all levels of appeal review, up to and including, the Director's Level of Review. Once a decision has been rendered at the Director's Level of Review, your administrative remedies will be considered exhausted.

Please print and sign below:

[signature] 2-6-07

Alan Hernandez — Date
Associate Warden-Complex II (A)

State of California | Department of Corrections and Rehabilitation

Memorandum

Date: MAR 1 6 2007

To: Rogers, P-54800
Centinela State Prison

Subject: SECOND LEVEL APPEAL RESPONSE
LOG NO.: CEN-D-06-01165

APPEAL DECISION: **GRANTED IN PART**

ISSUE:

It is the appellant's position that a Correctional Officer verbally disrespects him and harasses him by conducting numerous searches of his cell and takes his state issued clothing.

The appellant requests on appeal for the Officer to be removed from the housing unit and counseled by his supervisors.

INTERVIEWED BY: E. Stein, Correctional Sergeant, at the First Level of Review.

REGULATIONS: The rules governing this issue are:

California Code of Regulations, Title 15, Section (CCR) 3001. Subject to Regulations.
Regardless of commitment circumstances, every person confined or residing in facilities of the department is subject to the rules and regulations of the director, and to the procedures established by the warden, superintendent, or parole region administrator responsible for the operation of that facility.

CCR 3380. Chief Executive Officer.
(a) The warden or superintendent of an institution of the department is the chief executive officer of that institution, and is responsible for the custody, treatment, training and discipline of all inmates under his or her charge.
(c) Subject to the approval of the Director of Corrections, wardens, superintendents and parole region administrators will establish such operational plans and procedures as are required by the director for implementation of regulations and as may otherwise be required for their respective operations. Such procedures will apply only to the inmates, parolees and personnel under the administrator.

CCR 3391. Employee Conduct.
(a) Employees shall be alert, courteous, and professional in their dealings with inmates, parolees, fellow employees, visitors and members of the public. Inmates and parolees shall be addressed by their proper

names, and never by derogatory or slang reference. Prison numbers shall be used only with names to summon inmates via public address systems. Employees shall not use indecent, abusive, profane, or otherwise improper language while on duty. Irresponsible or unethical conduct or conduct reflecting discredit on themselves or the department, either on or off duty, shall be avoided by all employees.

(d) Citizens filing complaints alleging misconduct of a departmental peace officer employed by this department are required to read and sign the following statement:

YOU HAVE THE RIGHT TO MAKE A COMPLAINT AGAINST A POLICE OFFICER {this includes a departmental peace officer] FOR ANY IMPROPER POLICE [or peace] OFFICER CONDUCT. CALIFORNIA LAW REQUIRES THIS AGENCY TO HAVE A PROCEDURE TO INVESTIGATE CITIZENS' [or inmates'/parolees'] COMPLAINTS. YOU HAVE A RIGHT TO A WRITTEN DESCRIPTION OF THIS PROCEDURE. THIS AGENCY MAY FIND AFTER INVESTIGATION THAT THERE IS NOT ENOUGH EVIDENCE TO WARRANT ACTION ON YOUR COMPLAINT; EVEN IF THAT IS THE CASE, YOU HAVE THE RIGHT TO MAKE THE COMPLAINT AND HAVE IT INVESTIGATED IF YOU BELIEVE AN OFFICER BEHAVED IMPROPERLY. CITIZEN [or inmate/parolee] COMPLAINTS AND ANY REPORTS OR FINDINGS RELATING TO COMPLAINTS MUST BE RETAINED BY THIS AGENCY FOR AT LEAST FIVE YEARS.

DETERMINATION OF ISSUE:
A review of the allegations of staff misconduct presented in the written complaint has been completed. Based upon this review, your appeal has been handled as follows:

PROCESSED AS A STAFF COMPLAINT APPEAL INQUIRY

SUMMARY FOR APPEAL INQUIRY:
Upon review of the documentation submitted, it is determined that the appellant's allegations have been reviewed and evaluated by administrative staff and a thorough inquiry has been completed at the First Level of Review.

FINDINGS FOR AN APPEAL INQUIRY:
Your appeal is Partially Granted at the Second Level, as an inquiry into your allegation has been conducted. ALL STAFF PERSONNEL MATTERS ARE CONFIDENTIAL IN NATURE. As such, results of any inquiry will not be shared with staff, members of the public, or inmates. Although you have the right to submit a staff complaint, a request for administrative action regarding staff or the placement of documentation in a staff member's personnel file is beyond the scope of the staff complaint process.

Allegations of staff misconduct do not limit or restrict the availability of further relief via the inmate appeals process. If you wish to appeal the decision, you must submit your staff complaint appeal through all levels of appeal review, up to and including, the Director's Level of Review. Once a decision has been rendered at the Director's Level of Review, your administrative remedies will be considered exhausted.

DECISION: The appeal is granted in part.

The appellant is advised that this issue may be submitted for a Director's Level of Review if desired.

V. M. ALMAGER
Warden
Centinela State Prison

STATE OF CALIFORNIA
DEPARTMENT OF CORRECTIONS AND REHABILITATION
INMATE APPEALS BRANCH
P. O. BOX 942883
SACRAMENTO, CA 94283-0001

DIRECTOR'S LEVEL APPEAL DECISION

Date: JUN 13 2007

In re: Rogers, P-54800
Centinela State Prison
P.O. Box 731
Imperial, CA 92251-0731

IAB Case No.: 0612306 Local Log No.: CEN 06-01165

This matter was reviewed on behalf of the Director of the California Department of Corrections and Rehabilitation (CDCR) by Appeals Examiner Jack Batchelor, Facility Captain. All submitted documentation and supporting arguments of the parties have been considered.

I **APPELLANT'S ARGUMENT:** It is the appellant's position that for the past two or three months, he has withdrawn CDC Form 602, Inmate/Parolee Appeal Forms regarding Correctional Officer (CO) Rivas for verbally disrespecting him. Recently, a CDC 602 was partially granted regarding this CO's behavior and since then, CO Rivas has conducted cell searches which have resulted in his cell being "trashed." The appellant claims these cell inspections occur two to three times per week. The appellant requests that CO Rivas is removed from his building and counseled by her superiors.

II **SECOND LEVEL'S DECISION:** The reviewer found that that appropriate supervisory staff conducted an inquiry into this matter. The inquirer reviewed the submitted material and interviewed the involved parties. Release of the finding or information related to the inquiry is confidential and will not be disclosed.

III **DIRECTOR'S LEVEL DECISION:** Appeal is granted in part.

A. FINDINGS: Upon review of the documentation submitted, it is determined that the institution failed to comply with the provisions of Administrative Bulletin (AB) 05/03. Specifically, Attachment "E" of the AB provides the format in which staff complaints are to be prepared. In the section entitled, "SUMMARY FOR APPEAL INQUIRY" specific language is required. This language must include the date in which the appellant was interviewed and the name and title of the staff member conducting the interview. This section also requires a list of witnesses who was/were interviewed.

A review of the both the First Level of Review and Second Level of Review indicates that the format contained in Section "E" of AB 05/03 was not included in either response. There are no dates as to when the appellant was interviewed and by whom. There is also no witnesses listed who was/were interviewed. Therefore, the response to the appellant's appeal designated as a staff complaint is not in compliance with AB 05/03.

B. BASIS FOR THE DECISION:
California Penal Code Section: 832.5, 832.7, 832.8
California Code of Regulations, Title 15, Section: 3004, 3122
AB 05/03, Attachment "E"

C. ORDER: The Centinela State Prison (CEN) shall prepare an amended response to the appellant's appeal. The institution's response will be in compliance with AB 05/03, specifically Attachment "E."

This issue was discussed with the office of Chief Deputy Warden.

This decision exhausts the administrative remedy available to the appellant within CDCR.

N. GRANNIS, Chief
Inmate Appeals Branch

cc: Warden, CEN
Appeals Coordinator, CEN

JS44
(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

2254 ___ 1983 ___
FILING FEE PAID
Yes ___ No ___
IFP MOTION FILED
Yes ___
COPIES SENT TO
Court ___ ProSe ___

FILED
2007 OCT 17 PM 3:26
CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY ___ DEPUTY

I (a) PLAINTIFFS

Esau Rogers

DEFENDANTS

S. Rivas, et al

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Imperial
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Esau Rogers
PO Box 931
Imperial, CA 92251
P-54800

ATTORNEYS (IF KNOWN)

'07 CV 2010 W JMA

II. BASIS OF JURISDICTION (PLACE AN x IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT (For Diversity Cases Only)

	PT	DEF		PT	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated or Principal Place of Business in This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business in Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

42 U.S.C. 1983

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT
- ☐ 110 Insurance
- ☐ Marine
- ☐ Miller Act
- ☐ Negotiable Instrument
- ☐ 150 Recovery of Overpayment &Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153Recovery of Overpayment of Veterans Benefits
- ☐ 160 Stockholders Suits
- ☐ Other Contract
- ☐ 195 Contract Product Liability

TORTS — PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

TORTS — PERSONAL INJURY
- ☐ 362 Personal Injury- Medical Malpractice
- ☐ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC881
- ☐ 630 Liquor Laws
- ☐ 640 RR & Truck
- ☐ 650 Airline Regs
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710Fair Labor Standards Act
- 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt. Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc.
- ☐ Security Act

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (13958)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS - Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reappointment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce/ICC Rates/etc.
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities Exchange
- ☐ 875 Customer Challenge 12 USC
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900 Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State
- ☐ 890 Other Statutory Actions

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Eiectmant
- ☐ 240 Tort to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/Accommodations
- ☐ 444 Welfare
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence Habeas Corpus
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☒ 550 Civil Rights

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

☒ 1 Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appelate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23 **DEMAND $**

Check YES only if demanded in complaint:
JURY DEMAND: ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE Docket Number

DATE October 17, 2007

~~SIGNATURE OF ATTORNEY OF RECORD~~

R. Muells